

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
RISLEY, : Docket #1:22-cv-02780-  
 : KPF  
 :  
Plaintiff, :  
 :  
- against - :  
 :  
UNIVERSAL NAVIGATION, INC., et al., : New York, New York  
 : July 29, 2022  
Defendants. :  
 : REMOTE MOTION HEARING  
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PROCEEDINGS BEFORE  
THE HONORABLE KATHERINE POLK FAILLA,  
UNITED STATES DISTRICT JUDGE

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INDEXE X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

PROCEEDINGS

4

THE CLERK: Your Honor, this is in the matter of  
Risley vs. Universal Navigation Inc. et al.

Counsel, please state your name for the record,  
beginning with plaintiff.

MR. JAMES R. SERRITELLA: James Serritella from  
Kim & Serritella LLP. And I'm here with my colleague  
from my firm, Aram Boghosian. And I'm also here with my  
co-counsel, Chris McNamara -- Christopher McNamara and  
Michael Ward from Barton LLP.

HONORABLE KATHERINE POLK FAILLA (THE COURT):  
Good afternoon to all of you. This is Judge Failla.

May I please have the appearance for defendants,  
Universal Navigation, Hayden Adams, and Union Square  
Ventures, LLC?

MR. ELLIOT GREENFIELD: Yes, good afternoon,  
your Honor. This is Elliot Greenfield from Debevoise &  
Plimpton, and I'm joined by my colleague Brandon Fetzner.

THE COURT: Good afternoon to both of you.  
Thank you very much.

And representing defendant, Paradigm Operations,  
please?

MS. TANSY WOAN: Good afternoon, your Honor.  
This is Tansy Woan from Skadden Arps. I am joined by my  
colleagues, Alex Drylewski and Samantha Kaplan.

PROCEEDINGS

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THE COURT: Thank you very much. And welcome to you.

Mr. Greenfield, let me please go back to you for a moment, and then I'll return to Ms. Woan.

Mr. Greenfield, in the context of motions of this type, it's usually been my experience that defense counsel are present but not actively participating in questioning.

Is that your contemplation for today, or do you have a position you wish to share with me?

MR. GREENFIELD: That we don't take any position on the motion for appointment of lead plaintiff or lead counsel.

THE COURT: Thank you so much.

Ms. Woan, the same question?

MS. WOAN: Same response; we do not take a position on the lead plaintiff motion. Thank you, your Honor.

THE COURT: Of course, thank you.

And representing defendant AH Capital Management, LLC?

MS. SUSAN ENGEL: Good afternoon, your Honor. This is Susan Engel from Latham & Watkins, and I am with my colleague, also from Latham & Watkins, Julia Miller.

THE COURT: Thank you very much. Ms. Engel, if

PROCEEDINGS

6

1  
2 you could answer the question I just asked Ms. Woan and  
3 Mr. Greenfield about your contemplated participation in  
4 argument regarding the motions that are on today's  
5 calendar?

6 MS. ENGEL: The same response, your Honor. We  
7 do not take a position.

8 THE COURT: Okay. Thank you.

9 Mr. Serritella, I was advised by my deputy that  
10 you are the person speaking or taking the lead for  
11 plaintiff's counsel in this case, and so I will begin  
12 with you. Looking at the proposed lead plaintiff group,  
13 as I understand it -- and perhaps I'm understanding it  
14 incorrectly, it comprises six individuals who were not  
15 working together, perhaps had no prior knowledge of each  
16 other, but happened to have been consumers of the  
17 products at issue. As I read certain cases from  
18 colleagues in this district, including the *Varghese*  
19 decision issued by Judge Marrero in 2008, I think what  
20 I'm supposed to look at is whether the related members of  
21 the group can function cohesively and effectively manage  
22 the litigation apart from their lawyers. There are  
23 factors that I am told I am to consider, and they include  
24 the existence of a pre-litigation relationship, the  
25 involvement of the group members in the litigation thus

1 far, plans for cooperation, the sophistication of the  
2 members, and whether the members chose outside counsel  
3 and not vice-versa. I don't believe I have that, sir, in  
4 the materials that were submitted to me. Candidly, the  
5 materials I have, unless I'm reading them incorrectly,  
6 are largely boilerplate recitations regarding the  
7 aspirations of each putative lead plaintiff. But I have  
8 no confidence or no knowledge about their prior work  
9 together or what it is about them that can give me  
10 confidence that they will be able to work together and  
11 manage efficiently the litigation in this case. Perhaps  
12 you can make an oral representation in that regard, or  
13 perhaps you want to tell me that only some subset of  
14 these individuals will be seeking lead-plaintiff  
15 designation.

17 MR. SERRITELLA: Good afternoon, your Honor.  
18 This is James Serritella. I will address your questions.  
19 This case does comprise of individuals that are seeking  
20 to be lead plaintiff who were not part of the initial  
21 Complaint. That is correct. There is -- while I'm aware  
22 of those cases your Honor had mentioned, there is  
23 precedent in this district for the type of arrangement  
24 that we're seeking here and these types of cases in  
25 particular. It was done in the *Binance* case that we

1  
2 cited in our papers by Judge Carter, where you had a set  
3 of plaintiffs who sought to join as lead plaintiffs who  
4 were not part of the original filing. It was also done  
5 in the *Coinbase* case before Judge Engelmayer, and he  
6 wrote an opinion about this, which we also cited in our  
7 papers, as well. And I think Engelmayer did a fairly  
8 good job of going through how, similar to our case, just  
9 because the plaintiffs were not necessarily known to each  
10 other before this case was commenced, it doesn't mean  
11 that they cannot cohesively act as a lead-plaintiff  
12 group. And I can represent to the Court that they can.

13           And some of the factors that Judge Engelmayer  
14 looked at was also the size of the group and whether  
15 there was any evidence that the group was formed in bad  
16 faith. So here we have a relatively small group of six  
17 lead plaintiffs. I believe in the *Binance* case it was  
18 eight lead plaintiffs. And there obviously is no  
19 evidence of any bad faith. And I'll represent to the  
20 Court that the group has been working with us, they're  
21 aware of each other. They've all committed to serve as  
22 lead plaintiffs with the knowledge that they will be part  
23 of a lead group. They also understand what's at stake in  
24 the case. They understand that they will be part of the  
25 group that makes decisions.



I do want to point out something that I think is very pertinent to this type of case, securities class actions against crypto asset exchanges, that makes them somewhat unique, and that is that there is a standing component -- standing component -- that you don't see in a typical securities class action. And what I mean by that, your Honor, this is not a case where the lawyer cobbled together, you know, six plaintiffs to try to show the greatest financial interest, and all of those plaintiffs invested in the same security and so that they can get the lead plaintiff and lead counsel motion or favor. It's nothing like that, your Honor. As a matter of fact, what makes this different is that each of these plaintiffs have invested in different tokens that are the subject -- that will be the subject, we intend, if we're the lead plaintiff, of an Amended Complaint because, as Judge Cote dealt with in the *Bibox* decision, in order to plead claims for a particular token, you have to have an investor that invested in that token for them to have standing to be a class leader or a class representative. And so we have had individuals reach out to us in response to our PSLRA notice, and I could not in good conscience turn away investors that desire to be lead plaintiffs, had investments in tokens that at that time

1 PROCEEDINGS 10

2 were not the subject of our case. Had I turned them  
3 away, I would be turning away their claims and claims of  
4 other prospective class members. So that's part of the  
5 reason why we have a group, your Honor.

6 THE COURT: So let me be a little bit more  
7 specific. And by "specific," I also mean critical. The  
8 information that you're relaying to me right now is, I  
9 believe, information that you could have relayed in the  
10 sworn statements of your putative class representatives  
11 or co-lead plaintiffs. What I have instead is just  
12 boilerplate that gave me no confidence at all that they  
13 understood what was at stake, that they understood the  
14 standing issues that you've described for me now that  
15 they've been working together and that this wasn't  
16 somehow just engineered by lawyers in order to -- for  
17 purposes that perhaps might not be in keeping with the  
18 PSLRA. So, I mean, I'll listen to you. You can keep  
19 telling me things now, but I believe that a lot of this  
20 is stuff that you should have told me in the actual  
21 written submission.

22 MR. SERRITELLA: Understood, your Honor. And, I  
23 mean, if that's an issue, we have no problem with  
24 submitting amended certifications if your Honor will  
25 allow that. I can represent to your Honor that these

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## PROCEEDINGS

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issues have been communicated to all of our potential lead plaintiffs. They understand them; and, you know, with that said, that is part of the calculus. And if your Honor needs more comfort, we're happy to amend the certifications and provide that information.

THE COURT: Let me understand something different, please, and that is I want to confirm what I believe you're saying. I'm looking now at the chart that is on the seventh page of the memorandum in support of the motion for appointment of lead plaintiff. And it has each of the six plaintiffs listed. You said earlier that you couldn't in conscience turn away a plaintiff. I presume what you're saying is that the reason that you need six of them is because your contemplated amended class action Complaint includes or speaks to each of the tokens that are listed and that you needed, for example, Mr. Myers, who was the one purchaser of the Samsung Metaverse token; you need Ms. Vanesky because she is the one purchaser of the Wise token. Do I understand correctly why you perceived a need for all six?

MR. SERRITELLA: That's correct, your Honor.

THE COURT: I see. All right, let's then speak to -- unless there are other things -- sir, I don't believe at this time I'm going to ask for amended written

1 PROCEEDINGS 12

2 submissions. I'm assuming that you're making your  
3 representations to me as an officer of the court in  
4 candor and in accuracy. And what I'd like -- if there  
5 are other things you'd like me to know, then please tell  
6 me now.

7 MR. SERRITELLA: Yes. Thank you, your Honor,  
8 for that opportunity. And I appreciate that. Yes, 100%  
9 I am making these representations to you as an officer of  
10 the court with complete candor. And I guess I would just  
11 like to reiterate that, you know, there was a process  
12 that was done here; we published the notice, we had  
13 investors reach out to us. As I mentioned to your Honor,  
14 we've explained the circumstances to each of these  
15 proposed lead plaintiffs. They understand them. We have  
16 been in contact with them, and we've been in the process  
17 of coordinating with all of them. Everyone has exchanged  
18 each other's contact information, so they understand  
19 what's at stake here, and everyone has agreed to  
20 participate with that understanding.

21 THE COURT: So let me then please turn to the  
22 question of the appointment of lead counsel. And I see,  
23 as well, that you're asking for the appointment of more  
24 than one entity; you're asking for both the Barton Firm  
25 and the Kim & Serritella firm. My own experience with

co-lead plaintiff's counsel has been quite spotty, so I do want to make clear at the outset that there's only going to be one of you that interfaces with me. I'm only taking communications from one of you when you're speaking to me in oral proceedings or when you're writing letters to me regarding the progress of the litigation. I don't want to myself feel as though I'm obligated to reach out to a whole bunch of people from plaintiff's counsel in order to find out information. My bigger issue, as you might imagine, sir, is one of a concern of duplication of efforts. I saw nothing in the declarations of yourself and Mr. McNamara that gave me any sense of what structures you have put in place or will put in place in order to ensure that litigation responsibilities will be shared in an efficient manner and that duplication will be avoided. So if you want to speak to that now, please do.

MR. SERRITELLA: Sure, your Honor. First of all, I will address your Honor's concern about one person speaking. That would be myself, James Serritella. So that's not an issue. And as to the inner workings, without getting -- what I'll say to your Honor is we have been -- we have not been duplicating efforts. We have a process in place for us to divvy up how we're going to

1  
2 proceed with certain tasks in connection with the case.  
3 Without getting to into the weeds on this, but one of the  
4 first things we did when we paired up is we came up with  
5 ways in which we can split up research, we can split up  
6 certain tasks. And that's what we've been doing; and,  
7 again, I can represent to you as an officer of the court  
8 that there have not been, for the most part, duplication  
9 of efforts. There's been a lot of efficiencies gained by  
10 having Barton work with us on this case. So duplication  
11 really is not an issue.

12 THE COURT: Well, obviously, sir, I'll reserve  
13 the right in connection with any later fee petition, if  
14 we ever get to that point, to ensure that there has been  
15 no duplication. I just wanted to let you know at the  
16 outset that is something that concerns me because in  
17 prior class action litigations that I have presided over,  
18 there have been issues of duplication of efforts and just  
19 inefficiencies. So I'm giving you the warning at the  
20 front end.

21 What else would you like me to know, sir, about  
22 why you believe your firm and the Barton firm should be  
23 appointed co-interim lead plaintiff counsel?

24 MR. SERRITELLA: Well, I'll just say, your  
25 Honor, understood on that point. I just wanted to give

1  
2 you some comfort initially that we're very mindful of  
3 duplication of efforts. And so we take that very  
4 seriously, both firms do.

5           And with that, I would just say that we will  
6 largely rest on our papers about our experiences and  
7 capabilities. You know, I don't want to -- sometimes  
8 it's hard to talk about yourself and promote yourself,  
9 especially to a Court, but I will say that I think we did  
10 a decent job of laying out in our papers our litigation  
11 experience, our respective teams and what we bring to the  
12 table and how we believe that we could prosecute this  
13 case very effectively and in a meaningful way for the  
14 proposed lead plaintiffs and class.

15           THE COURT: Sir, at page 12 of your memorandum  
16 of law you recite that you have nearly 15 years of  
17 complex commercial litigation and class action  
18 experience. I don't know that I saw comparable figures  
19 for the attorneys at the Barton firm. If you know, may I  
20 have a sense of how long they have been doing this kind  
21 of work?

22           MR. SERRITELLA: So, your Honor, my  
23 understanding is that the firm has been around for  
24 several decades and they have decades of experience with  
25 this type of work.

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## PROCEEDINGS

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THE COURT: All right, Mr. McNamara, do you want to say anything more specific than that?

MR. CHRISTOPHER MCNAMARA: Good afternoon, your Honor. I would. Thanks so much for offering me the opportunity to do so. So I attempted to provide some select biographies in support of my declaration. I can speak for myself; I graduated law school in 2010. I've worked at -- this is now my third firm -- previously, Quinn Emanuel Urquhart & Sullivan; and Willkie Farr & Gallagher. More than a decade of complex commercial litigation experience, including class actions on both sides of that. My colleague, my partner, Michael Ward, also has -- and Mr. Ward is with me here today -- also has, you know, relevant experience, as does Mr. Barton. I believe Mr. Barton and Mr. Ward were also before you in an earlier securities fraud class action matter. So those are just three of the attorneys that, you know, we're going to be -- who are to be working on this matter. And certainly, as we -- I assume we may be dealing with motions to dismiss from three firms, three very sophisticated firms -- we're going to use our resources efficiently but certainly draw upon a wealth of experience. That includes, you know, class actions on both sides of (indiscernible).



PROCEEDINGS

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THE COURT: Okay. Thank you.

All right, Mr. Serritella, is there anything else you'd like me to know, sir?

MR. SERRITELLA: No, your Honor, that's it.

THE COURT: Okay. Thank you.

Mr. McNamara, was that prior case the Acari Therapeutics Litigation or something --

MR. MCNAMARA: I believe that's correct, your Honor. I was not on that one, but Mr. Ward and Mr. Barton were, as I understand it.

THE COURT: Okay. Thank you.

Unless anyone wants me to go back and start reciting cases to them, I will refrain from doing that here, just in the interest of efficiency. I have, in preparation for this proceeding, as I hope is evidenced by my questions, reviewed all of the written submissions presented by the Barton firm and the Kim & Serritella firm in support of this motion. I did -- did -- have some concern about the sheer numerosity of plaintiffs and their ability to work together, but I do accept the standing issue, and I am familiar with the Judge Cote decision that was cited to me earlier. And so principally because the expectation is that each of these individuals provides standing for different tokens and

1  
2 because they otherwise have qualified insofar as they've  
3 timely filed a motion, they have the largest financial  
4 interest of those who have spoken to me, and they satisfy  
5 at least from a preliminary perspective the typicality  
6 and adequacy requirements of Rule 23, I will appoint the  
7 six-plaintiff investor group as co-lead plaintiffs in  
8 this case.

9           Separately I've been asked to and I will appoint  
10 the Kim & Serritella and Barton firms as interim co-lead  
11 counsel for this matter. I hope and I think that I've  
12 made clear the concerns that I have, and I'm sure that  
13 Mr. Serritella and Mr. McNamara will take heed my  
14 concerns about duplication of efforts and unnecessary  
15 billings. So it is my intention to sign the -- I believe  
16 there was a proposed order given to me in preparation for  
17 this conference that would discuss the appointment of  
18 lead plaintiff and lead plaintiff's counsel.

19           Now, Mr. Serritella, is there -- you'll excuse  
20 me, I can look back at the proposed order to see if it's  
21 included here -- have the parties discussed a schedule  
22 for the filing of an amended consolidated class action  
23 complaint?

24           MR. SERRITELLA: Yes, your Honor, there is a  
25 stipulation order on file; it's docket entry number 21.

1  
2 And I believe --

3 THE COURT: Ah, yes, that's right; we did it  
4 before the conference. I'm remembering that now. Okay.  
5 So from the perspective of the parties, there is in fact  
6 nothing else -- there's no further schedule to set; I  
7 just need to review and to sign the order of appointment.  
8 Is that correct, Mr. Serritella?

9 MR. SERRITELLA: Correct, your Honor. And I  
10 believe the schedule that was entered -- this is docket  
11 entry number 21 again -- it contemplates that the parties  
12 are now to confer and then propose a schedule for an  
13 Amended Complaint and a Motion to Dismiss, which we will  
14 do.

15 THE COURT: And I'm sure you will be very  
16 reasonable in the times that you all select. So that is  
17 fine. I see that, and I see that I signed it back in  
18 April. All right, Mr. Serritella, from your team's  
19 perspective, is there anything else that you would like  
20 to address with me in this proceeding today that I may  
21 have overlooked?

22 MR. SERRITELLA: No, your Honor. We're good.

23 THE COURT: All right.

24 MR. SERRITELLA: I hope so.

25 THE COURT: Thank you, sir.

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PROCEEDINGS

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Mr. Greenfield, anything to discuss with me today?

MR. GREENFIELD: No, nothing from us. Thank you, your Honor.

THE COURT: Of course. Thank you. And Ms. Woan, anything else today?

MS. WOAN: Nothing further, your Honor. Thank you.

THE COURT: Thank you so much.

Ms. Engel, anything further today?

MS. ENGEL: Same answer. Nothing further, your Honor. Thanks very much.

THE COURT: All right. Well, let me begin by thanking you, first of all, for participating by telephone, although I suspect that may have been easier for you than coming down here to the courthouse, but also for adjusting your schedules to permit me to take this call earlier and thereby kind of make my schedule a little bit easier today. You have my thanks for that.

Let me also wish to you and to your families and to your clients continued safety and good health in this pandemic. Be well, everyone. I look forward to hearing from you in a few weeks. We are adjourned.

(Whereupon, the matter is recessed.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Risley v. Universal Navigation Inc. et al, Docket #22-cv-02780-KPF, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: August 1, 2022